

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20718
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On August 24, 2007, the staff of the Revenue Operations Division (Division) of the Idaho State Tax Commission issued a Notice of Deficiency Determination[Redacted](taxpayer) reducing a refund claimed for the taxable year 2006 in the total amount of \$358.

On September 6, 2007, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather chose to provide additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer is a citizen and resident [Redacted]. The taxpayer filed a 2006 nonresident Idaho income tax return claiming that all the income she received during the year was exempt by treaty. Attached to the taxpayer's return were a W-2 Wage and Tax Statement and two 1042-S Foreign Person's U.S. Source Income Subject to Withholding forms. One of the 1042-S forms coded the income as scholarship or fellowship grant income. The other coded the income as compensation during studying and training. Both 1042-S forms used an exemption code as exempt income under a tax treaty. The 1042-S forms did not equal the taxpayer's total income; nevertheless, the taxpayer claimed all her income was exempt by treaty.

When the Division processed the taxpayer's return, it discovered the taxpayer did not report her W-2 wages as taxable income. The Division determined the only exempt income was

the income reported on the 1042-S forms and corrected the taxpayer's return. The Division sent the taxpayer a Notice of Deficiency Determination, which the taxpayer protested.

The taxpayer stated the income she received was for being a teaching assistant and a research assistant. She stated the treaty between the [Redacted] considered teaching assistantships and research assistantships as scholarships from a university. She cited section 20(B) as the applicable section of the treaty that exempted the income. The taxpayer also provided a copy of a letter from the [Redacted] that stated according to the Internal Revenue Service, teaching assistantships and research assistantships are scholarships from the university and are tax-exempt under section 20(B) of the treaty between the United States and [Redacted].

The Division reviewed the information and determined it was best that the matter be referred for administrative review. The Tax Commission reviewed the matter and sent the taxpayer a letter giving her two options for having the Notice of Deficiency Determination redetermined. The taxpayer stated she was too busy with her research to attend a hearing; however, the second alternative of providing additional information was acceptable. The Tax Commission assumed the taxpayer would be providing her additional information within a few weeks of stating her choice; however, nothing was received. The Tax Commission sent a follow-up letter to the taxpayer giving her a final date to submit her information. She did not respond. Therefore, the Tax Commission decided the matter based upon the information available.

The treaty between the United States [Redacted] Agreement Between the Government of the United States of America and the [Redacted] for the Avoidance of Double Taxation and the Prevention of Tax Evasion with Respect to Taxes On Income (treaty). Article 20 of the treaty states:

ARTICLE 20

A student, business apprentice or trainee who is or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education, training or obtaining special technical experience shall be exempt from tax in that Contracting State with respect to:

- a) payments received from abroad for the purpose of his maintenance, education, study, research or training;
- b) grants or awards from a government, scientific, educational or other tax-exempt organization; and
- c) income from personal services performed in that Contracting State in an amount not in excess of 5,000 United States dollars or its equivalent in Chinese yuan for any taxable year.

The benefits provided under this Article shall extend only for such period of time as is reasonably necessary to complete the education or training.

The taxpayer's income was identified as W-2 wage income, scholarship or fellowship grants, and compensation during studying and training. The scholarship or fellowship grant was \$855, the compensation during studying and training was \$5,000, and her W-2 wages were \$10,851.70. All were paid by Idaho State University. The Tax Commission contacted the University and asked how it determined the types of payment made to its students. The University stated it went through a review process to determine the type of monetary award. Basically, if a student was being paid for services the University would have to hire someone to do, the student was put on the payroll. If a W-2 was produced, the University determined the student was an employee of the University.

Subsection (b) of Article 20 of the treaty specifically exempts income from grants or awards from a government, scientific, educational, or other tax-exempt organization. Idaho State University is an educational organization. However, the University only identified a small portion of the taxpayer's income as a grant. The taxpayer's other income was identified as W-2 wages. In the treaty, this income comes under the classification of income derived from the

performance of personal services. Subsection (c) of Article 20 discusses income from the performance of personal services as it relates to students. Subsection (c) specifically exempts \$5,000 of personal service income. The University identified this income as compensation during studying and training and coded it as exempt under treaty. The balance of the taxpayer's income, over and above the \$5,000, is non-exempt W-2 wages. This income is taxable by the United States and by the state of Idaho.

The corrections the Division made to the taxpayer's 2006 Idaho income tax return corresponded with the provisions of the treaty between the United States and [Redacted]. Therefore, the Tax Commission upholds the Division's determination of the taxpayer's Idaho tax liability.

WHEREFORE, the Notice of Deficiency Determination dated August 24, 2007, is hereby APPROVED, AFFIRMED, and MADE FINAL.

Since the taxpayer's refund was only reduced and no additional tax is owed, no DEMAND for payment is required or necessary.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.
